

# **EXHIBIT 3**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF ILLINOIS  
3 SPRINGFIELD DIVISION

4 Case No. 3:09-CV-03073-SEM-BGC

5 UNITED STATES OF AMERICA and the  
6 STATES OF CALIFORNIA, ILLINOIS,  
7 NORTH CAROLINA, and OHIO,

8 Plaintiffs,

9 vs.

10 DISH NETWORK, L.L.C.,

11 Defendant.

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13  
14 D E P O S I T I O N

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16 O F

17 T H O M A S H E N R Y K R A K A U E R

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21  
22 At Franklin Square Services  
23 1829 East Franklin Street  
24 Building 600  
25 Chapel Hill, North Carolina

September 28, 2011  
10:00 a.m.

1 Q Do you recall receiving telephone calls from  
2 parties purporting to be with DISH Network?

3 MR. RAO: Objection.

4 A I have not.

5 Q You have not received any calls from parties  
6 purporting to be from DISH Network.

7 A I have received phone calls from parties that  
8 have indicated that I have been a long time client of  
9 DIRECTV, and they have offered me opportunities to save  
10 some money. And then, as I have pursued that, it turns  
11 out that what they are asking me to is switch to DISH  
12 Network.

13 So when I pick up the phone and begin talking  
14 to the person, they don't say--they don't identify  
15 themselves as being involved with DISH Network nor do  
16 they identify themselves as being with DIRECTV, but they  
17 indicate that they know that I have been a client of  
18 DIRECTV's and offer me an opportunity to save money.

19 Q All right. Do you recall when these calls  
20 began?

21 A I think the one that I pursued, you know, as far  
22 as I did was in 2007.

23 Q All right. And how did you pursue this manner?

24 A Would you like the full description of the  
25 interaction or for me just to say that I escalated it

1 legitimate calls. So I--I really have no detailed  
2 recollection of the, you know, the number and percentage  
3 of calls that fall in different categories that I've  
4 received.

5 Q Okay. You had also stated for the record that  
6 you received one other call that--that the contents of  
7 that call was similar to the phone call that you received  
8 in 2009; is that correct?

9 A I have received several other calls where the  
10 contents are similar to the--the call in 2009, and I did  
11 not respond in other ways--in any way other than  
12 terminating the call or not even answering it.

13 Q Okay. And when you would not answer it, you're  
14 referring to times where a message was left on your  
15 message machine or voice mail?

16 A Yeah, in--in some cases there was a call, I  
17 would pick it up and with the same entry point, and I  
18 would just say either "I'm not interested," or I would  
19 just hang up. I only recall one call, which was the most  
20 recent one, which came when I was not there that went to  
21 my voice mail.

22 Q Now, each one of those--well, strike that. Let  
23 me first ask you, would you say that the number of calls  
24 was approximately three, more than three, less than  
25 three?

1 A Probably more than three.

2 Q What would your best estimate be?

3 A Three to five.

4 Q Three to five.

5 A Yeah.

6 Q Is it safe to say that in each one of those  
7 phone calls the only satellite service provider that was  
8 mentioned was DIRECTV?

9 A That is correct.

10 Q So, no other cable providers, satellite service  
11 provider was mentioned on any of those phone calls.

12 A No.

13 Q Okay. Real briefly, and I believe you may have  
14 been asked this line of questioning with respect to your  
15 professional background, but I just want to ask a few  
16 questions about that, so I apologize if it's a little bit  
17 redundant, but you're retired now, correct?

18 A Yes, sir.

19 Q Okay. And you volunteer for what organization?

20 A The Museum of Durham History.

21 Q And is that also the organization that you  
22 recently retired from?

23 A I recently retired from the Museum of Life and  
24 Science. And when you say "recently," that was in 2003,  
25 2004.

1 switching from DIRECTV to DISH Network.

2 A I believe, to the best of my recollection, that  
3 he indicated that he could save me money by me switching  
4 my account from DIRECTV to DISH Network. I don't know  
5 whether that answers the question that you are asking.

6 Q Do you recall whether he said that he personally  
7 represented DISH Network?

8 A He did not.

9 Q Do you recall whether he stated whether he was  
10 an employee of DISH Network?

11 A He did not.

12 Q Did he say whether he was authorized by DISH  
13 Network to call you?

14 A He did not.

15 Q Do you recall on that telephone call with this  
16 individual whether he mentioned any other services,  
17 whether they were satellite services--

18 A No, he did not.

19 Q --or cable services?

20 A No, he did not.

21 Q You had also stated for the record prior to  
22 that, after that phone call you contacted both DIRECTV  
23 and DISH Network; is that correct?

24 A That is correct.

25 Q Do you recall the person at DISH Network that

1 you spoke with?

2 A I do not independently recall that.

3 Q Do you recall when the first time that you spoke  
4 to anybody at DISH Network and what was the sum and  
5 substance of that conversation?

6 A It probably--well, to the best of my  
7 recollection, it was within a day or two of the phone  
8 call that was--that I received from the person asking me  
9 to switch from DIRECTV to DISH.

10 MR. KIRKMAN: Okay. Sorry, can you read  
11 that back?

12 (Whereupon, the court reporter read back,  
13 as requested, the answer appearing on  
14 page 50, lines 6 through 9, inclusive.)

15 Q Okay. You had also stated that you had gotten  
16 a response from DISH Network with respect to this phone  
17 call. Can you just describe for us again what that  
18 response consisted of?

19 A Yes. The essence of it is in Exhibit 2, but  
20 from my independent recollection I did receive a phone  
21 call from someone at DISH Network indicating that the  
22 phone call that I received was from a contractor, not an  
23 employee of DISH Network, and that they were not  
24 responsible for his tactics or actions.

25 Q Do you know what an internal Do Not Call



1 Registry is or list is?

2 A I do not.

3 Q If I may, it's the practice of, you know,  
4 companies having their own internal Do Not Call list so  
5 they don't violate the national Do Not Call list. Do you  
6 recall whether the person at DISH Network ever told you  
7 that they were either placing--

8 A I do not recall.

9 Q You don't recall talking to anybody about  
10 internal Do Not Call lists. Okay.

11 A Off the record, I would love to know the phone  
12 call or the means that I could get myself put on an  
13 internal DISH Network Do Not Call listing. How do I go  
14 about doing that?

15 Q That's not relevant here. And, if I may, while  
16 we're talking about that, given the fact that you stated  
17 you have only received one call mentioning--even  
18 mentioning DISH Network, why would you want an internal  
19 call list for DISH Network?

20 A That's an irrelevant question. I--I--it's my  
21 decision whether I want to be on a independent DISH  
22 Network Do Not Call.

23 Q Sure.

24 A And it may be that one call is sufficient for  
25 me to decide that I do not want to be called by DISH



1 Network.

2 Q Absolutely, and that's your prerogative.

3 A And that's--

4 Q And I--I just--for the record, I wanted to be  
5 clear. Again, you have stated that you have not received  
6 any other calls from any company or telemarketer  
7 purporting to be from DISH other than the one call in  
8 2009 in which they simply mentioned DISH Network; is that  
9 correct?

10 A The answer to that question is, after the  
11 experience in 2009 I chose not to pursue any of these  
12 phone calls farther to determine who they were coming  
13 from. So I didn't give anybody the opportunity to  
14 indicate whether they were from DISH Network.

15 Q Okay. Do you know one way or the other whether  
16 you received any phone calls from DISH Network other than  
17 the 2009 call that you mentioned?

18 A I--I do not.

19 Q You do not, okay. Do you have any information  
20 or documents that would unequivocally link the 2009 call  
21 to DISH Network?

22 A Will you repeat that question?

23 Q Sure. Are you aware of any information or  
24 documents that would unequivocally link the phone call  
25 that you received in 2009 to DISH Network?